

The Law of Contract

MGT388 Lecture 3

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NOTE:

ONLINE FORMATIVE TEST WILL BE AVAILABLE ON BLACKBOARD IN WEEK 4



Objectives

1. Understand how a contract can be discharged (comes to an end)
2. Determine when a breach of contract has occurred and what remedies are available.
3. Appreciate the doctrine of frustration and how it is dealt with in practice.
4. Explain how the court may treat a contract arising from improper conduct (misrepresentation, duress, and undue influence).
5. Explain the concept of arbitration and appreciate its practical importance



1. How a contract can be discharged

- Performance of contract (contract completed)
- By mutual agreement of contractual parties
- Breach of contract (contract may be terminated if certain terms breached)

合同的挫败（剩余的合同职责被履行）：是一个用于在发生某个无法预见的、外来的事件（挫折性事件），导致合同无法履行的情况下终止合同的法律概念

- Frustration of contract (remaining contractual duties are discharged)

不当行为（法院使合同“可撤销”）

- Improper conduct (contract is made ‘voidable’ by the courts)



2. Breach of contract: the right of rescission

撤销权

- Repudiatory breach?
 - Breach of condition/primary obligation – Yes
 - Breach of warranty – No
 - Breach of innominate term – Maybe (depends on seriousness)

拒绝履行违约是指当一方明确表示不会履行其合同义务，或通过其行为显示出不会履行合同义务时发生的违约。这种违约给予另一方权利立即终止合同，并可能寻求赔偿。

合同中的“条件”是合同的基本和核心条款。如果这些条款被违反，则非违约方有权选择终止合同并索赔。

“保证”是合同中较不重要的条款，违反保证一般不会导致合同终止，但可能会导致索赔。

“不定名条款”是介于条件和保证之间的条款。它是否导致合同终止取决于违约的严重性和对合同执行的影响。

- Anticipatory breach
 - If one party indicates that it will not/cannot perform obligation in advance, the other party can choose to terminate

预期违约是在合同约定的履行日期之前，一方明确表示将不履行其合同义务，或其行为明确显示将不能履行合同义务时发生的。在这种情况下，非违约方可以在违约实际发生之前选择终止合同。



Other remedies for breach of contract

- Claim for a debt (a claim for the 'work' already done under the contract)
- Injunction
 - Prohibitory injunction 禁止性禁令
 - Mandatory injunction 强制性禁令
- Specific performance
- Damages



Availability of damages for breach of contract

- Punitive/exemplary damages 惩罚性/惩戒性损害赔偿
 - not available for breach of contract (*Addis v Gramophone*)
不适用于违约 (Addis v Gramophone)
- Restitutory damages 恢复性损害赔偿
 - Possible but highly exceptional and will only be awarded if other remedies are inadequate and claimant has a legitimate interest in depriving the defendant of his profit (*AG v Blake*) 可能但非常例外，只有在其他补救措施不足且原告有合法权益剥夺被告利润的情况下，才会授予
- Compensatory damages 补偿性损害赔偿
 - Aim is to put wronged party in position they would have been in had contract been performed/completed
 - Protects expectation interest (or in some cases reliance interest)



What can a claimant be compensated for in relation to contract breach?

- Pecuniary loss 金钱损失
 - Lost profits
 - Cost of replacement performance ('putting it right')
 - Damage to property
 - Damage to commercial reputation
 - Personal injury (tariff system used)
- Non-pecuniary loss (possible but more difficult)
 - Loss of pleasure or peace of mind
 - Emotional distress stemming from physical inconvenience



Other limitations on compensation

- Causation ('but for' the breach the loss would not have occurred)

因果关系：如果没有违约，损失不会发生。这意味着要求补偿的损失必须直接由违约行为引起。比如：你破坏了我的金库，我的钱没了

- Remoteness (loss claimed for must not be too 'remote' from the breach)
 - Loss must occur naturally or as a result of the usual course of things after a breach,
OR;
损失必须自然发生，或者由于违约后的正常过程，
 - Loss was in reasonable contemplation of both of the parties at the time contract was entered into
在签订合同时，双方都在合理考虑损失

- Mitigation (duty of claimant to mitigate his/her loss resulting from breach)

缓解：（索赔人减轻其因违约而造成的损失的义务），索赔方有责任减轻因违约造成的损失，这意味着受害方应采取合理措施减少损失，而不是袖手旁观。

- Liquidated damages clause (enforceable) vs. penalty clauses (unenforceable)

违约赔偿条款（可执行）与处罚条款（不可执行）：确定赔偿金条款是合同中规定的、在违约发生时可以执行的补偿金额，而违约金条款通常被视为不可强制执行，因为它们可能会被法院视为惩罚性质，超出了补偿实际损失的范畴。



3. Frustration of contract

沮丧是一种法律手段，用于因发生“令人沮丧的事件”而终止合同。

- Frustration is a legal device that serves to terminate a contract due to the occurrence of a ‘frustrating event’

这是一种法律手段，用于在发生某种挫折性事件时终止合同。挫折性事件是指在合同签订后发生的、未能预见到的事件，这些事件在根本上改变了合同的性质，以至于履行合同变得不可能或极其不合理。

- Fault acts as a barrier & requires a lack of foreseeability

故障起到障碍的作用&需要缺乏可预见性

如果挫折性事件是因为一方的过失而发生的，那么这通常会阻碍该方主张合同挫折。合同挫折要求事件是无法预见的。

- Effects of frustration

- Has effect of extinguishing all remaining obligations under the contract (Sections 1(2) and 1(3) of Law Reform (Frustrated Contracts) Act 1943)

合同挫折会导致合同下所有剩余义务的消灭。这意味着合同双方不再对彼此有履行义务，也就是说，合同因挫折性事件而自动终止。



Frustration of contract (cont.)

- It is “not lightly to be invoked to relieve contracting parties of the normal consequences of imprudent bargains” (*Pioneer Shipping Ltd v BTP Tioxide*)

如果合同的不利后果是因为一方的不谨慎决定造成的，通常不能以合同挫折为由来避免这些后果。

- Frustrating events

- Impossibility 即事实上无法履行合同的情况。
- Illegality 如果合同的履行因法律变化而变得非法。
- Frustration of purpose 合同的基本目的无法实现，但情况必须非常极端。
- Impracticability (but must be extreme)

在某些司法管辖区中，如果合同的履行虽然不是不可能，但因为无法预见的情况变得极其困难或昂贵，以至于认为是不合理的。

- Restrictive view on frustration has resulted in increased use of force majeure clauses

由于对合同挫折的限制性看法，法院通常鼓励在合同中使用“不可抗力条款”（force majeure clauses）。这些条款可以明确规定在特定的、无法预见的情况下合同的某些或所有义务可以被暂停或终止，而无需依赖合同挫折的法律原则。



4. Improper conduct

- Where one party has acted improperly, the court may deem the contract 'voidable' (innocent party can choose to terminate)

如果一方行为不当，法院可以认为合同“可撤销”（无辜一方可以选择终止）

- i) Misrepresentation
- ii) Duress & Economic Duress
- iii) Undue Influence



i) Misrepresentation

- A false statement of fact which induces the other party to enter into a contract
- Representation must be:
 - Statement of fact (not mere opinion) – though can include conduct
 - Material
 - Known
 - Intention
- Types of misrepresentation:
 - Fraudulent misrepresentation
 - Negligent misrepresentation at Common law
 - Negligent misrepresentation at s2(1) Misrepresentation Act 1967 (a.k.a. Statutory misrepresentation)
 - Innocent misrepresentation

欺诈fraudulent
疏忽negligent
无辜innocent



ii) Duress & Economic Duress

胁迫

- Duress
 - Violence or threat of violence
 - Violence must be unlawful (Williams v Bailey, 1866)
 - Causation
- Economic duress
 - Pressure must amount to coercion of will (vitiates consent)
 - Pressure or threat must be illegitimate
 - Causation

压力必须等同于强迫意志（需要同意）
压力或威胁必须是非法的



iii) Undue Influence (on claimant by 3rd party)

- Class 1: Actual undue influence
 - Claimant must prove (i.e. burden of proof on claimant)
 - Existence of a relationship of trust or confidence between the victim and the wrongdoer
 - Pressure that the wrongdoer exerted led to the victim entering into contract
 - No 'special relationship' exists between parties (as with Class 2)
- Class 2: Presumed undue influence
 - Class 2A: Relationship exists which automatically gives rise to presumption of U.I.
 - Parent/child, doctor/patient, solicitor/client, religious advisor/member of flock
 - Law will presume Undue Influence - burden of proof on defendant to rebut
 - Class 2B: Relationship exists which does not give rise to automatic presumption of U.I. but in which trust and confidence is placed in another
 - e.g. employee/employer, cohabitees
 - Claimant only needs to show relationship was one where trust/confidence placed in wrongdoer
 - Where this is shown law will presume Undue Influence - burden of proof on defendant to rebut

Remedies for improper conduct

- Misrepresentation - Misrepresentation Act 1967
 - Section 2(1) Rescission - voidable contract
 - Section 2(2) Damages (but not for innocent misrepresentation)
- Duress & economic duress – common law
 - Rescission - voidable contract
 - Damages
- Undue influence – equity
 - Rescission - voidable contract
 - Damages



5. Arbitration

- Bypasses the courts' jurisdiction
- Arbitration Act 1996
 - S1 - The parties should be free to agree how their disputes are resolved
 - S33 - Arbitrator must act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.



Practical advantages of arbitration

- Arbitrator is an expert
- Outside of state system – speed & control
- Outside of public eye - privacy
- Less confrontational - more likely to maintain business relationship
- Cheaper than going through the courts - but still expensive!

